



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224
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[REDACTED]

Dear [REDACTED]

This responds to your letter dated April 17, 2001, written to [REDACTED] of the [REDACTED]. Your letter was FAXed to our office for a reply.

You express concern about the Internal Revenue Service (the Service) asserting penalties under section 6721 of the Internal Revenue Code (Code) against the [REDACTED] for failure to include correct payee taxpayer identification numbers (TINs) on information returns reporting interest that the [REDACTED] pay on United States savings bonds redeemed at the [REDACTED]. You explain that the various [REDACTED] have had mixed results in their requests for waivers of the penalties pursuant to section 6724. As explained below, a [REDACTED] may request a waiver for reasonable cause, and the Service may consider the [REDACTED] to have acted in a responsible manner, if the bank complies with the specific payee TIN solicitation requirement in section 31.3406(b)(2)-3(c) of the Regulations on Employment Taxes and Collection of Income Tax at the Source.

In general, section 6049 of the Code requires every person who makes payments of interest aggregating \$10 or more to file an information return. Section 1.6049-(4)(b)(1) of the Income Tax Regulations requires the payor of interest to include the payee's name, address, and TIN on the information return.

Section 3406 of the Code requires any person making a reportable payment (including interest) to another person to deduct and withhold tax if the payee fails to furnish his TIN to the payor in the manner required or if the Service notifies the payor that the payee's TIN is incorrect. In general, for reportable interest, the payee must also provide the payor with a written certification under penalties of perjury that the TIN furnished is correct and that the payee is not subject to backup withholding because of notified payee underreporting.

Section 31.3406(b)(2)-3 of the regulations provides special rules for payments of interest in a “window transaction.” The regulations provide that a window transaction includes a payment of interest on a United States savings bond. The regulations provide that backup withholding applies to a window transaction only if the payee does not furnish a TIN to the payor as required in paragraph (c) of the regulation or furnishes an obviously incorrect TIN. The regulations provide that backup withholding is not required even if the Service notifies the payor of the payee’s incorrect TIN or of notified payee underreporting. Section 31.3406(b)(2)-3(c) provides that the payee must furnish the payor with the payee’s TIN either orally or in writing at the time of the transaction. The regulations provide that the payee is not required to certify under penalties of perjury that the payee’s TIN is correct or that the payee is not subject to withholding due to notified payee underreporting.

Section 6721 of the Code imposes a penalty for failure to file correct and complete information returns. A failure subject to the penalty includes filing an information return with an incorrect or missing payee TIN. Section 6722 imposes a penalty for failure to furnish correct and complete payee statements.

Section 6724(a) of the Code provides that the Service may waive the penalties under sections 6721 and 6722 if the payor shows that the failure is due to reasonable cause and not to willful neglect. Section 301.6724-1(a)(2) of the Regulations on Procedure and Administration provides that a penalty may be waived for reasonable cause only if the filer establishes: (1) that there are significant mitigating factors with respect to the failure; or (2) that the failure arose from events beyond the filer’s control. The regulations also require that the filer establish that it acted in a responsible manner before and after the failure occurred.

Sections 301.6724-1(e) and (f) of the regulations provide special payee TIN soliciting rules for missing and incorrect payee TINs to establish that the filer acted in a responsible manner. The initial solicitation must be made at the time of the window transaction. However, the additional annual solicitation requirements are not required for window transactions because there are no additional payments made with respect to the transaction. See 301.6724-1(e)(1)(vi)(B) and 301.6724-1(f)(5)(ii) of the regulations.

Accordingly, a [REDACTED] may request a waiver of the section 6721 penalty for reasonable cause under section 6724 of the Code and the regulations thereunder. The Service may consider the [REDACTED] to have acted in a responsible manner if the bank complies with the specific TIN solicitation requirement in section 31.3406(b)(2)-3(c) of the regulations made at the time of the window transaction. A payor of interest in a window transaction is not required to comply with the additional annual TIN solicitation requirements in sections 301.6724-1(e) and (f) in order to establish that it acted in a responsible manner.

We hope that this explanation of the information reporting requirements for window transactions is helpful. We have referred this matter to the appropriate national office of the Service to alert them to the issue. We apologize for any inconvenience that you have experienced. If you need further assistance, please contact Donna Welch of this office at (202) 622-4910.

Sincerely,

John J. McGreevy
Assistant to the Chief, Branch 1
Administrative Provisions & Judicial Practice